

**§ 15.32 Procedures for the handling of lawsuits against Department employees arising within the scope of their office or employment.**

The following procedures shall be followed in the event that a civil action or proceeding is brought, in any court, against a present or former employee of the Department (or against his/her estate) for personal injury, loss of property or death, resulting from the Department employee's activities while acting within the scope of his/her office or employment:

(a) After being served with process or pleadings in such an action or proceeding, the employee (or the executor(rix) or administrator(rix)) of the estate shall within five (5) calendar days of receipt, deliver all such process and pleadings or an attested true copy thereof, together with a fully detailed report of the circumstances of the incident giving rise to the court action or proceeding to the General Counsel. Where appropriate, the General Counsel, or his/her designee, may request that the Department of Justice provide legal representation for the present or former Department employee.

(b)(1) Only if a present or former employee of the Department has satisfied the requirements of paragraph (a) of this section in a timely fashion, may the employee subsequently request indemnification to satisfy a verdict, judgment, or award entered against that employee.

(2) No request for indemnification will be considered unless the employee has submitted a written request, with appropriate documentation, including copies of the verdict, judgment, appeal bond, award, or settlement proposal through the employee's supervisory chain to the head of the employee's component. The written request will include an explanation by the employee of how the employee was working within the scope of employment and whether the employee has insurance or any other source of indemnification.

(3) The head of the component or his/her designee will forward the employee's request with a recommendation to the General Counsel for review. The request for indemnification shall include a detailed analysis of the basis for the

recommendation. The head of the component will also certify to the General Counsel that the component has funds available to pay the indemnification.

(c) The General Counsel or his/her designee will review the circumstances of the incident giving rise to the action or proceeding, and all data bearing upon the question of whether the employee was acting within the scope of his/her employment. Where appropriate, the agency shall seek the views of the Department of Justice and/or the U.S. Attorney for the district embracing the place where the action or proceeding is brought.

(d) The General Counsel shall forward the request, the accompanying documentation, and the General Counsel's recommendation to the Secretary or his/her designee for decision.

**PART 16—PROCEDURES FOR A VOLUNTARY CONSUMER PRODUCT INFORMATION LABELING PROGRAM**

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**§ 16.1 Purpose.**

The purpose of this part is to establish procedures under which a voluntary consumer product information labeling program administered by the Department of Commerce will function.

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### § 16.2 Description and goal of program.

(a) The Department's Voluntary Consumer Product Information Labeling Program makes available to consumers, at the point of sale, information on consumer product performance in an understandable and useful form so as to facilitate accurate consumer purchasing decisions and enhance consumer satisfaction. It also educates consumers, distributors and retailers in the use of the product performance information displayed and provides manufacturers and other persons who participate in the program with an opportunity to convey to the public the particular advantages of their products. These objectives are accomplished by:

(1) Selecting or developing standardized test methods by which selected product performance characteristics can be measured;

(2) Developing labeling methods by which information concerning product performance can be transmitted in useful form to consumers at the point of sale;

(3) Encouraging manufacturers and other participants in the program voluntarily to test and label their products according to the selected or developed methods; and

(4) Encouraging consumers through various informational and educational programs to utilize the product performance information provided.

(b) The program involves voluntary labeling by enrolled participants of selected categories of consumer products with information concerning selected performance characteristics of those products. The performance characteristics selected are those that are of demonstrable importance to consumers, that consumers cannot evaluate through mere inspection of the product, and that can be measured objectively and reported understandably to consumers. The consumer products covered include those for which incorrect purchase decision can result in financial loss, dissatisfaction, or inconvenience. The program seeks to avoid the duplication of other Federal programs under which performance characteristics are labeled by exempting those performance characteristics from

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this program. However, where the Federal agency concerned agrees, the Department of Commerce may include information about those performance characteristics in CPILP labels if, by doing so, product comparison at the point of sale is simplified for consumers, and the complexity of product labeling is reduced for the manufacturers by enabling them to comply with the labeling requirements of other Federal agencies through participation in CPILP.

(c) For selected categories of consumer products, the program includes advertising guidelines covering situations where quantitative performance values are stated in advertising or where qualitative comparisons are made of the performance of different products.

[42 FR 26648, May 25, 1977, as amended at 43 FR 8255, Mar. 1, 1978]

### § 16.3 Definitions.

(a) The term *Secretary* means the Secretary of Commerce or her designee.

(b) The term *consumer* means the first person who purchases a consumer product for purposes other than resale.

(c) The term *participant* means a manufacturer, assembler or private brand labeler of consumer products or an importer of such products for resale and who participates in the program.

(d) The term *consumer product* means any article produced or distributed for sale to a consumer for the use, consumption, or enjoyment of such consumer. The term does not include products customarily intended primarily for business, commercial, or industrial use.

(e) The term *person* means an individual; a manufacturer; distributor; retailer; importer; private brand labeler; government agency at the Federal (including any agency of the Department of Commerce), State and local level; consumer organization; trade association; standards writing body; professional society; testing laboratory; or educational institution.

(f) The term *performance characteristic* means a performance characteristic of a consumer product that can be measured in an objective manner with respect to a given consumer product.

(g) The term *Specification* means a Performance Information Labeling Specification developed under §16.5.

(h) The term *label* means printed matter affixed to or otherwise provided with a consumer product and containing all of the performance characteristics as prescribed by the Specification applicable to that product.

(i) The term *designated agent* means a person as defined in paragraph (e) of this section, who has been designated by the Secretary to carry out appropriate operational procedures on behalf of more than one participant in this program in accordance with rules set out under §16.9.

**§16.4 Finding of need to establish a specification for labeling a consumer product.**

(a) Any person may request the Secretary to find that there is a need to label a particular consumer product with information concerning one or more specific performance characteristics of that product.

(b) Such a request shall be in writing and will, to the extent practicable, include the following information:

(1) Identification of the consumer product;

(2) Extent that the product identified in paragraph (b)(1) of this section is used by the public and, if known, what the production or sales volume is of such product;

(3) Nature and extent of difficulty experienced by consumers in making informed purchase decisions because of a lack of knowledge regarding the performance characteristics of the identified consumer product;

(4) Potential or actual loss to consumers as a result of an incorrect decision based on an inadequate understanding of the performance characteristics of the identified consumer product;

(5) Extent of incidence of consumer complaints arising from or reasonably traceable to lack of knowledge regarding the performance characteristics of the identified consumer product;

(6) If known, whether there currently exist test methods which could be used to test the performance characteristics of the identified consumer product and an identification of those test methods;

(7) Reasons why it is felt, in cases where existing test methods are identified in responding to paragraph (b)(6) of this section, that such test methods are suitable for making objective measurements of the performance characteristics of the identified consumer product; and

(8) Estimated cost to participants to test and label the product.

(c) The Secretary may ask for more information to support a request made under paragraph (a) of this section if she feels it is necessary to do so, or, if she deems it to be in the public interest, may develop such information herself as by consultation on a one-time basis with consumers, consumer organizations, and others. The Secretary shall act expeditiously on all requests and shall notify the requester of her decision in writing. If the Secretary determines that there is no need to establish a Specification for labeling the requested consumer product performance characteristics, or because of a lack of resources, she will decline to act further on the request. In those instances where the Secretary declines a request, she shall state the reasons for so declining.

(d) If the Secretary finds that a need exists to establish a Specification for labeling a consumer product under this program, she shall publish a notice in the FEDERAL REGISTER setting out such finding and its basis and stating that she is developing a proposed Specification in accordance with §16.5.

**§16.5 Development of performance information labeling specifications.**

(a) If the Secretary makes a finding of need pursuant to §16.4, she will publish a proposed Performance Information Labeling Specification in the FEDERAL REGISTER with a notice giving the complete text of the proposed Specification and any other pertinent information. The notice will invite any interested person to submit written comments on the proposed Specification within 45 days after its publication in the FEDERAL REGISTER, unless another time limit is provided by the Secretary. Interested persons wanting to express their views in an informal hearing may do so, if within 15 days

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after the proposed Specification is published in the FEDERAL REGISTER, they request the Secretary to hold a hearing. Such informal hearings shall be held so as to give all interested persons an opportunity for the oral presentation of data, views, or arguments in addition to the opportunity to make written submissions. Notice of such hearings shall be published in the FEDERAL REGISTER. A transcript shall be kept of any oral presentations.

(b) Each Specification shall as a minimum include:

(1) A description of the performance characteristics of the consumer product covered;

(2) An identification by reference of the test methods to be used in measuring the performance characteristics. The test methods, where they exist and are deemed appropriate for inclusion in the particular Specification involved, shall be those which are described in nationally-recognized voluntary standards. Where appropriate test methods do not exist, they will be developed by the Department of Commerce in cooperation with interested parties and set out in full in the Specification;

(3) A prototype label and directions for displaying the label on or with the consumer product concerned. Such directions will not prohibit the display of additional information by the participant on space adjacent to the marked boundaries of the label; and

(4) Conditions of participation.

(c) The Secretary, after consideration of all written and oral comments and other materials received in accordance with paragraph (a) of this section, shall publish in the FEDERAL REGISTER within 30 days after the final date for receipt of comments, or as soon as practicable thereafter, a notice either:

(1) Giving the complete text of a final Specification, including conditions of use, and stating that any prospective participant in the program desiring voluntarily to use the Department of Commerce Mark developed under § 16.10 must advise the Department of Commerce; or

(2) Stating that the proposed Specification will be further developed before final publication; or

(3) Withdrawing the proposed Specification from further consideration.

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### § 16.6 Establishment of fees and charges.

(a) The Secretary in conjunction with the use of the Working Capital Fund of the National Institute of Standards & Technology, as authorized under section 12 of the Act of March 3, 1901, as amended (15 U.S.C. 278b), for this program, shall establish fees and charges for use of the Department of Commerce Label and Mark on each product. Such fees and charges shall be related to the number of units of products labeled, where appropriate. The fees and charges established by the Secretary, which may be revised by her when she deems it appropriate to do so, shall be in amounts calculated to make the operation of this program as self-sufficient as reasonable. A separate notice will be published in the FEDERAL REGISTER simultaneously with the notice of each proposed Specification referred to in § 16.5(a). Such notice will set out a schedule of estimated fees and charges the Secretary proposes to establish. The notice would be furnished for informational and guidance purposes only in order that the public may evaluate the proposed Specification in light of the expected fees to be charged.

(b) At such time as the Secretary publishes the notice announcing the final Specification referred to in § 16.5(c)(1), she shall simultaneously publish a separate notice in the FEDERAL REGISTER setting forth the final schedule of fees that will be charged participants in the program. The effective date of such final schedule of fees shall be the same as the date on which the final Specification takes effect.

(c) Revisions, if any, to the fees and charges established by the Secretary under paragraph (b) of this section shall be published in subsequent FEDERAL REGISTER notices and shall take effect not less than thirty (30) days after the date of publication of such notice.

(d) The establishment of fees and charges under this section may, at any time, be suspended by the Secretary for any length of time.

[42 FR 26648, May 25, 1977, as amended at 42 FR 57686, Nov. 4, 1977; 55 FR 38315, Sept. 18, 1990]

**§ 16.7 Participation in program.**

(a) Any manufacturer, assembler, or private brand labeler of consumer products or importer of such products for resale, desiring to participate in this program will so notify the Secretary. The notification will identify the particular Specification to be used and the prospective participant's identification and model numbers for the products to be labeled. The notification must include a statement that if accepted as a participant in the program by the Secretary, the prospective participant will:

(1) Abide by all conditions imposed by these procedures:

(2) Abide by the conditions contained in the Specification, as prescribed in paragraph (d) of this section;

(3) Pay the fees and charges established by the Secretary; and

(4) Desist from using the Department of Commerce label and Mark if his participation is terminated under § 16.8.

(b) The Secretary shall act expeditiously on all requests to participate in the program and shall notify each prospective participant of her decision in writing. In those instances where the Secretary declines a request, she shall state the reasons for so declining.

(c) If a prospective participant seeking to participate in the program is notified by the Secretary that she proposes to deny that prospective participant the right to participate, that prospective participant shall have thirty (30) days from the receipt of such notification to request a hearing under the provisions of 5 U.S.C. 556. The Secretary's proposed denial shall become final through the issuance of a written decision to such prospective participant in the event that he does not appeal such notification by the end of the thirty (30) day period. If however, such prospective participant requests a hearing within that thirty (30) day period, the Secretary's proposed denial shall be stayed pending the outcome of the hearing held pursuant to 5 U.S.C. 556.

(d) The conditions set out in each Specification will include, but not be limited to, the following:

(1) Prior to the use of a Label, the participant will make or have made the measurements to obtain the infor-

mation required for inclusion on the Label and, if requested, will forward within 30 days such measurement data to the Secretary. Such measurement data will be kept on file by the participant or his agent for two years after that product is no longer manufactured unless otherwise provided in the Specification.

(2) The participant will describe the test results on the Label as prescribed in the Specification.

(3) The participant will display or arrange to display, in accordance with the appropriate Specification, the Label on or with each individual product of the type covered except for units exported from the U.S. Participants who utilized more than one brand name may participate by labeling some or all of the brand names. All models with the same brand name must be included in the program unless they are for export only.

(4) The participant agrees at his expense to comply with any reasonable request of the Secretary to have consumer products manufactured, assembled, imported, or privately brand labeled by him tested to determine that testing has been done according to the relevant Specification.

(5) Participants may reproduce the Department of Commerce Label and Mark in advertising: *Provided*, That the entire Label, complete with all information required to be displayed at the point of retail sale, is shown legibly and is not combined or associated directly with any other mark or logo.

**§ 16.8 Termination of participation.**

(a) The Secretary upon finding that a participant is not complying with the conditions set out in these procedures or in a Specification may terminate upon 30 days notice the participant's right to continue his participation in the program: *Provided*, That the participant shall first be given an opportunity to show cause why the participation should not be terminated.

(b) Upon receipt of a notice from the Secretary of the proposed termination, which notice shall set forth the reasons for such proposed termination, the participant shall have thirty (30) days from the date of receipt of such notification to request a hearing under the

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provisions of 5 U.S.C. 556. The Secretary's proposed termination shall become final through the issuance of a written decision to the participant in the event such participant does not appeal the proposed termination within the thirty (30) day period. If, however, the participant requests a hearing within the thirty (30) day period, the Secretary's proposed termination shall be stayed pending the outcome of the hearing held pursuant to 5 U.S.C. 556.

(c) A participant may at any time terminate his participation and responsibilities under this program with regard to a specific type of product by giving written notice to the Secretary that he has discontinued use of the Department of Commerce Label and Mark for all consumer products of the type involved.

### **§ 16.9 Rules governing designated agents.**

(a) The following rules, requirements and tasks shall be applicable with respect to the seeking of designated agent status and the performance of that role after such status has been obtained. Each person desiring to be designated as a designated agent under this program shall:

(1) Make written application to the Secretary;

(2) Provide appropriate information showing his qualifications to represent members within a given product area and that more than one prospective participant in that product area is agreeable to such representation; and

(3) Agree to service any participant in this program in the agent's cognizant product area whether or not such participant is a member of the organization or body which that agent represents.

(b) The Secretary may require a person seeking designated agent status to supply further information before granting such status to that person. The Secretary will notify each person seeking designated agent status, in writing, as expeditiously as possible after evaluating such person's application.

(c) Each person granted designated agent status shall:

(1) Provide the Secretary with a list of the participants that the designated

agent services under the program. The Secretary shall also be provided an updated list as soon thereafter as may be practicable whenever there are any changes in the list;

(2) Collect fees and charges from the participants serviced under this program, consolidate such sums, and transmit those fees and charges required under § 16.6 to the Secretary;

(3) Distribute Department of Commerce Marks developed under § 16.10 or instructions for the printing of such Marks to the participants that the designated agent services under this program;

(4) Gather and consolidate such statistical information as may be required by the Secretary from individual participants serviced;

(5) Provide the Secretary with reports, including the consolidated statistical information referred to in paragraph (c)(4) of this section, as may be called for by her, relative to the activities of the participants the designated agent is servicing; and

(6) Perform any additional tasks mutually agreed upon by the designated agent and the Secretary.

(d) If a person seeking designated agent status is notified by the Secretary that she proposes to deny that person such status, that person shall have thirty (30) days from the date of receipt of such notification to request a hearing under the provisions of 5 U.S.C. 556. The Secretary's proposed denial shall become final through the issuance of a written decision to such person in the event that he does not appeal such notification by the end of that thirty (30) day period. If, however, such person requests a hearing within that thirty (30) day period, the Secretary proposed denial shall be stayed pending the outcome of the hearing held pursuant to 5 U.S.C. 556.

(e) If the Secretary finds that a designated agent has violated the terms of paragraph (c) of this section, she may, after consultations with such designated agent, notify such person that she proposes to revoke his status as a designated agent.

(f) Upon receipt of a notice from the Secretary of the proposed revocation, which notice shall set forth the reasons

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for such proposed revocation, the designated agent shall have thirty (30) days from the date of receipt of such notification to request a hearing under the provisions of U.S.C. 556. The Secretary's proposed revocation shall become final through the issuance of a written decision to the designated agent in the event such designated agent does not appeal the proposed revocation within that thirty (30) day period. If, however, the designated agent requires a hearing within that thirty (30) day period, the Secretary's proposed revocation shall be stayed pending the outcome of the hearing held pursuant to 5 U.S.C. 556.

### § 16.10 The Department of Commerce Mark.

The Department of Commerce shall develop a Mark which shall be registered in the U.S. Patent and Trademark Office under 15 U.S.C. 1054 for use on each Label described in a Specification.

### § 16.11 Amendment or revision of a performance information labeling specification.

The Secretary may by order amend or revise any Specification published under § 16.5. The procedure applicable to the establishment of a Specification under § 16.5 shall be followed in amending or revising such Specification. Such amendment or revision shall not apply to consumer products manufactured prior to the effective date of the amendment or revision.

### § 16.12 Consumer education.

The Secretary, in close cooperation and coordination with interested Government agencies, appropriate trade associations and industry members, consumer organizations, and other interested persons shall carry out a program to educate consumers relative to the significance of the labeling program. Some elements of this program shall also be directed toward informing retailers and other interested groups about the program.

### § 16.13 Coordination with State and local programs.

The Secretary will establish and maintain an active program of commu-

nication with appropriate State and local government offices and agencies and will furnish and make available information and assistance that will promote uniformity in State and local programs for the labeling of performance characteristics of consumer products.

### § 16.14 Annual report.

The Secretary will prepare an annual report of activities under the program, including an evaluation of the program and a list of participants, designated agents, and types of consumer products covered.

## PART 17—LICENSING OF GOVERNMENT-OWNED INVENTIONS IN THE CUSTODY OF THE DEPARTMENT OF COMMERCE

### Subpart A—Licensing of Rights in Domestic Patents and Patent Applications

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17.1 Licensing rules.

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EDITORIAL NOTE: 41 CFR Part 101-4 referred to in this part was removed at 50 FR 28402, July 12, 1985.

### Subpart A—Licensing of Rights in Domestic Patents and Patent Applications

### § 17.1 Licensing rules.

(a) The Government-wide rules for the licensing of rights in domestic patents and patent applications vested in the United States of America, found at 41 CFR 101-4.1, are applicable to all such licensing activities of the Department of Commerce, subject to the following minor clarifications: